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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/351,263	07/12/1999	DAN KIKINIS	P3304	9489

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CENTRAL COAST PATENT AGENCY  
PO BOX 187  
AROMAS, CA 95004

EXAMINER

NGUYEN, STEVEN H D

ART UNIT PAPER NUMBER

2665

DATE MAILED: 12/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/351,263

Applicant(s)

KIKINIS, DAN

Examiner

Steven HD Nguyen

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 July 1999.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_. 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Objections*

1. Claim 2 is objected to because of the following informalities: the applicant should delete one of "." at the end of the claim. Appropriate correction is required.

### *Double Patenting*

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1 and 4-5 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 3 of U.S. Patent No. 6421329 (Here in Kikinis) in view of Maxemchuk (USP 6219346).

Regarding claims 1 and 4-5, Kikinis discloses a data network telephony (DNT) system, comprising a base station connected to a DNT capable data network and to a plurality of wireless transceivers, each transceiver transmitting to a distinct area, the base station adapted to operate the transceivers by a two-way, narrow-band, multiple-channel, real-time duplex radio protocol; and a plurality of portable computer-enhanced client communicator units, including microphone and speaker apparatus, each assigned a unique address and adapted to communicate with the

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base station via the transceivers by the two-way real-time radio protocol and to process DNT calls. However, Kikinis fails to disclose the wireless system operates as a CSMA/CD. In the same field of endeavor, Maxemchuk discloses a wireless system, which uses a CSMA/CD for transmitting a voice and data packet via a internet (col. 6, lines 8-67).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to apply a CSMA/CD in a wireless system as disclosed by Maxemchuk's system. The motivation would have been to prevent collision between the mobile devices.

4. Claim 1 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6078566 (Here in Kikinis) in view of Maxemchuk (USP 6219346).

Regarding claim 1, Kikinis discloses a data network telephony (DNT) system, comprising a base station connected to a DNT capable data network and to a plurality of wireless transceivers, each transceiver transmitting to a distinct area, the base station adapted to operate the transceivers by a two-way, narrow-band, multiple-channel, real-time duplex radio protocol; and a plurality of portable computer-enhanced client communicator units, including microphone and speaker apparatus, each assigned a unique address and adapted to communicate with the base station via the transceivers by the two-way real-time radio protocol and to process DNT calls. However, Kikinis fails to disclose the wireless system operates as a CSMA/CD. In the same field of endeavor, Maxemchuk discloses a wireless system, which uses a CSMA/CD for transmitting a voice and data packet via a internet (col. 6, lines 8-67).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to apply a CSMA/CD in a wireless system as disclosed by Maxemchuk's system. The motivation would have been to prevent collision between the mobile devices.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

6. Claims 1 and 4 are rejected under 35 U.S.C. 102(e) as being anticipated by Maxemchuk (USP 6219346).

Regarding claim 1, Maxemchuk discloses (Fig 1-6 and col. 1-13) a wireless system operating with CSMA/CD coupling to a data network telephony (DNT) comprising a base station connected to a DNT capable data network and to a plurality of wireless transceivers, each transceiver transmitting to a distinct area, the base station adapted to operate the transceivers by a two-way, narrow-band, multiple-channel, real-time duplex radio protocol (Fig 1

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discloses a base station for coupling to plurality of transceivers and internet "DNT" wherein each of transceivers cover an service area and the transceivers operate in two way, narrow band, multi-channel, real time duplex radio protocol "transmitting voice packet on inbound and outbound frequencies in a narrow band"); and a plurality of portable computer-enhanced client communicator units, including microphone and speaker apparatus, each assigned a unique address and adapted to communicate with the base station via the transceivers by the two-way real-time radio protocol and to process DNT calls (Fig 1 and 6 discloses a plurality of mobile units including a microphone and speaker for receiving and transmitting voice and data packet wherein each mobile has a unique address and using a two way real time protocol "a protocol used to transmit voice packet" and process a telephone call via a data network).

Regarding claim 4, Maxemchuk discloses a base station maintaining a routing table listing addresses of the mobile unit operating in the area and updating the routing table when the mobile unit roaming from one area to another (Col 10, lines 12-34, discloses a base station maintaining a list of the mobile unit in the area for routing the received packet and updating the list when the mobile moves to another area).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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8. Claims 2-3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maxemchuk as applied to claim 1 above, and further in view of Pepe (USP 5742905).

Regarding claims 2-3 and 5, Maxemchuk discloses (Fig 2) a hierarchical network of connected routers between the internet and a plurality of base stations, each connected to a transceiver wherein the base station and router maintain a routing table; wherein an mobile unit moves to another cell updating occurring in a minimum number of routers (Col 10, lines 12-34, discloses a base station maintaining a list of the mobile unit in the area for routing the received packet and updating the list when the mobile moves to another area). However, Maxemchuk fails to disclose the base station is adapted to interact with the mobile unit in personal routing functions and a personal router application for executing on the base station or transceiver and on the client mobile unit for editing the routing rules for their own mobile and uploading the edited rules to the base station or transceiver for using in routing incoming calls. In the same field of endeavor, Pepe discloses (Fig 1-45 and col. 1, lines 10 to col. 36, lines 67) a personal router application for executing on the base station or transceiver and on the client mobile unit for editing the routing rules for their own mobile and uploading the edited rules to the base station or transceiver for using in routing incoming calls and the base station adapted to interact with client mobile in personal functions (Fig 13-45, the PDA executes the software for using to edit routing rules and uploading it to a server which has a routing application for executing the routing information and the PDA interacts with the server in personal routing functions).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to apply a personal router application for executing on the base station or transceiver and on the client mobile unit for editing the routing rules for their own mobile and

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uploading the edited rules to the base station or transceiver for using in routing incoming calls and the base station adapted to interact with client mobile in personal functions as disclosed by Pepe's system into Maxemchuk's system. The motivation would have been to provide a user with a real time control of the incoming calls.

### *Conclusion*

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

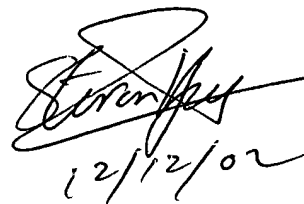
Maxemchuk (USP 5970412) discloses a wireless system using CSMA/CD.

O'Hagan (USP 6424830) discloses a wireless system using CSMA.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven HD Nguyen whose telephone number is (703) 308-8848. The examiner can normally be reached on 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy D Vu can be reached on (703) 308-6602. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9314 for regular communications and (703) 872-9314 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4700.



12/12/02